

AMENDED IN ASSEMBLY MAY 6, 2013

AMENDED IN ASSEMBLY APRIL 15, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 375**

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**Introduced by Assembly Member Buchanan**  
(Principal coauthor: Senator Padilla)  
**(Coauthor: Assembly Member Muratsuchi)**

February 14, 2013

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An act to amend Sections 44932, 44934, 44936, 44939, 44940, 44941, and 44944 of, and to add Section 44944.2 to, the Education Code, relating to school employees.

### LEGISLATIVE COUNSEL'S DIGEST

AB 375, as amended, Buchanan. School employees: dismissal or suspension.

(1) Existing law prohibits a permanent employee from being dismissed except for one or more of specified causes, including, among other causes, immoral or unprofessional conduct. Existing law requires the governing board of a school district to give notice to a permanent employee of its intention to dismiss or suspend the employee, together with a written statement of charges, for unprofessional conduct or unsatisfactory performance, at the expiration of 30 days from the date of service of the notice, unless the employee demands a hearing.

This bill would require that a governing board's notice to an employee of its intention to dismiss or suspend the employee, together with written charges filed or formulated pursuant to those procedures, be sufficient to initiate a hearing, as prescribed, and would prohibit the governing

board from being required to file or serve a separate accusation. The bill would revise various procedures for providing notice of dismissal or suspension and would authorize a notice of dismissal or suspension to be given at any time of year, except a notice for a proceeding involving only charges of unsatisfactory performance, which would only be given during the instructional year of the schoolsite where the employee is physically employed. ~~The bill would require that, once a demand has been made for a hearing, the school district immediately notify the Office of Administrative Hearings.~~ The bill would impose various requirements for the filing of a demand for a hearing and the conduct of hearings by the Office of Administrative Hearings. The bill would delete obsolete provisions relating to the suspension of a permanent employee based on knowing membership by the employee in the Communist Party.

(2) Existing law provides that upon being charged, as specified, with certain sex or controlled substance offenses, a certificated employee be placed on either a compulsory leave of absence or an optional leave of absence for certain enumerated violations.

This bill would revise the definitions of “charged with a mandatory leave of absence offense” and “charged with an optional leave of absence offense” for purposes of those provisions governing when a certificated employee is required to be placed on either a compulsory leave of absence or an optional leave of absence. Because these revisions would increase the number of employees subject to immediate placement on compulsory leave of absence, thereby increasing the duties of school districts, the bill would impose a state-mandated local program.

(3) Existing law requires in a dismissal or suspension proceeding against a permanent employee for unprofessional conduct or unsatisfactory performance, if a hearing is requested by the employee, that the hearing be commenced within 60 days from the date of the employee’s demand for a hearing.

This bill would require that the hearing be commenced within 6 months from the date of the employee’s demand for a hearing, and be completed *by a closing of the record* within 7 months from the date of the employee’s demand for a hearing. *The bill would require that, if the record cannot be closed within that timeframe, the charges be dismissed without prejudice to the governing board of the school district to refile, as specified.* The bill would revise various procedures for the conduct of those hearings, as prescribed. The bill would require that, in a dismissal or suspension proceeding carried out under the above

provisions, the parties make specified disclosures in lieu of certain written discovery, as prescribed, and would authorize the parties to obtain discovery by oral deposition. The bill would require the governing board of the school district and the state to share equally the expenses of the hearing if the Commission on Professional Competence determines that the employee should be dismissed or suspended.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Legislature finds and declares the following:
- 2 (a) Pupils, educators, administrators, school boards, *and* school
- 3 district employees, ~~and judges~~ need a teacher dismissal process
- 4 that is both fair and efficient.
- 5 (b) This act is intended to revise existing statutes in a manner
- 6 that will ~~continue current practices, but reduce~~ *update and*
- 7 *streamline the procedures for teacher discipline and dismissal,*
- 8 *making it more cost effective and reducing the time necessary to*
- 9 *complete the teacher dismissal process.*
- 10 SEC. 2. Section 44932 of the Education Code is amended to
- 11 read:
- 12 44932. (a) A permanent employee shall not be dismissed
- 13 except for one or more of the following causes:
- 14 (1) Immoral conduct.
- 15 (2) Unprofessional conduct.
- 16 (3) Commission, aiding, or advocating the commission of acts
- 17 of criminal syndicalism, as prohibited by Chapter 188 of the
- 18 Statutes of 1919, or in any amendment thereof.
- 19 (4) Dishonesty.
- 20 (5) Unsatisfactory performance.
- 21 (6) Evident unfitness for service.

1 (7) Physical or mental condition unfitting him or her to instruct  
2 or associate with children.

3 (8) Persistent violation of or refusal to obey the school laws of  
4 the state or reasonable regulations prescribed for the government  
5 of the public schools by the state board or by the governing board  
6 of the school district employing him or her.

7 (9) Conviction of a felony or of any crime involving moral  
8 turpitude.

9 (10) Violation of Section 51530 or conduct specified in Section  
10 1028 of the Government Code, added by Chapter 1418 of the  
11 Statutes of 1947.

12 (11) Alcoholism or other drug abuse that makes the employee  
13 unfit to instruct or associate with children.

14 (b) The governing board of a school district may suspend  
15 without pay for a specific period of time on grounds of  
16 unprofessional conduct a permanent certificated employee or, in  
17 a school district with an average daily attendance of less than 250  
18 pupils, a probationary employee, pursuant to the procedures  
19 specified in Sections 44933, 44934, 44935, 44936, 44937, 44943,  
20 and 44944. This authorization shall not apply to a school district  
21 that has adopted a collective bargaining agreement pursuant to  
22 subdivision (b) of Section 3543.2 of the Government Code.

23 SEC. 3. Section 44934 of the Education Code is amended to  
24 read:

25 44934. (a) Upon the filing of written charges, duly signed and  
26 verified by the person filing them, with the governing board of the  
27 school district, or upon a written statement of charges formulated  
28 by the governing board, charging that there exists cause, as  
29 specified in Section 44932 or 44933, for the dismissal or  
30 suspension of a permanent employee of the district, the governing  
31 board may, upon majority vote, except as provided in this article  
32 if it deems the action necessary, give notice to the permanent  
33 employee of its intention to dismiss or suspend him or her at the  
34 expiration of 30 days from the date of service of the notice, unless  
35 the employee demands a hearing as provided in this article.  
36 Suspension proceedings may be initiated pursuant to this section  
37 only if the governing board has not adopted a collective bargaining  
38 agreement pursuant to subdivision (b) of Section 3543.2 of the  
39 Government Code.

1 (b) Any written statement of charges of unprofessional conduct  
2 or unsatisfactory performance shall specify instances of behavior  
3 and the acts or omissions constituting the charge so that the teacher  
4 will be able to prepare his or her defense. It shall, where applicable,  
5 state the statutes and rules that the teacher is alleged to have  
6 violated, ~~but~~ and it shall also set forth the facts relevant to each  
7 occasion of alleged unprofessional conduct or unsatisfactory  
8 performance.

9 (c) If the governing board has given notice to a permanent  
10 employee of its intention to dismiss or suspend him or her, based  
11 upon written charges filed or formulated pursuant to this section,  
12 the charges may be amended only upon motion before an  
13 administrative law judge of the Office of Administrative Hearings.  
14 The amendment of charges ~~shall be substantially related to the~~  
15 ~~original charge and~~ shall not result in any prejudice to the  
16 responding party. No motion to amend shall be granted less than  
17 90 days before the hearing on the charges *if it would extend the*  
18 *close of the record beyond the seven-month deadline pursuant to*  
19 *paragraph (1) of subdivision (a) of Section 44944.*

20 (d) A governing board's notice to an employee of its intention  
21 to dismiss or suspend him or her, together with written charges  
22 filed or formulated pursuant to this section, shall be sufficient to  
23 initiate a hearing under Section 11503 of the Government Code,  
24 and the governing board shall not be required to file or serve a  
25 separate accusation.

26 (e) This section shall also apply to the suspension of  
27 probationary employees in a school district with an average daily  
28 attendance of less than 250 pupils that has not adopted a collective  
29 bargaining agreement pursuant to subdivision (b) of Section 3542.2  
30 of the Government Code.

31 SEC. 4. Section 44936 of the Education Code is amended to  
32 read:

33 44936. (a) The notice of dismissal or suspension in a  
34 proceeding initiated pursuant to Section 44934 may be given at  
35 any time of year.

36 (b) Notwithstanding subdivision (a), the notice of dismissal or  
37 suspension in a proceeding involving only charges of unsatisfactory  
38 performance initiated pursuant to Section 44934 shall only be  
39 given during the instructional year of the schoolsite where the  
40 employee is physically employed.

1 (c) The notice of dismissal or suspension shall be in writing and  
2 be served upon the employee personally at his or her last known  
3 address. A copy of the charges filed, containing the information  
4 required by Section 11503 of the Government Code, together with  
5 a copy of the provisions of this article, shall be attached to the  
6 notice.

7 SEC. 5. Section 44939 of the Education Code is amended to  
8 read:

9 44939. (a) Upon the filing of written charges, duly signed and  
10 verified by the person filing them with the governing board of a  
11 school district, or upon a written statement of charges formulated  
12 by the governing board, charging a permanent employee of the  
13 district with immoral conduct, conviction of a felony or of any  
14 crime involving moral turpitude, with incompetency due to mental  
15 disability, or with willful refusal to perform regular assignments  
16 without reasonable cause, as prescribed by reasonable rules and  
17 regulations of the employing school district, the governing board  
18 may, if it deems that action necessary, immediately suspend the  
19 employee from his or her duties and give notice to him or her of  
20 his or her suspension, and that 30 days after service of the notice,  
21 he or she will be dismissed, unless he or she demands a hearing.

22 (b) (1) An employee who has been placed on suspension  
23 pursuant to this section may serve and file with the Office of  
24 Administrative Hearings a motion for immediate reversal of  
25 suspension. Review of a motion filed pursuant to this section shall  
26 be limited to a determination as to whether the facts as alleged in  
27 the statement of charges, if true, are sufficient to constitute a basis  
28 for immediate suspension under this section. The motion shall  
29 include a memorandum of points and authorities setting forth law  
30 and argument supporting the employee's contention that the  
31 statement of charges does not set forth a sufficient basis for  
32 immediate suspension.

33 (2) The motion shall be served upon the governing board and  
34 filed within 30 days after service upon the employee of the initial  
35 pleading in the matter. The governing board shall have the right  
36 to serve and file a written response to the motion before or at the  
37 time of hearing.

38 (3) The hearing on the motion for immediate reversal of  
39 suspension shall be held no later than 30 days after the motion is  
40 filed with the Office of Administrative Hearings.

(4) The administrative law judge shall, no later than 15 days after the hearing, issue an order denying or granting the motion. The order shall be in writing, and a copy of the order shall be served by the Office of Administrative Hearings upon the parties. The grant or denial of the motion shall be without prejudice to consideration by the Commission on Professional Competence, based upon the full evidentiary record before it, of the validity of the grounds for dismissal. *The ruling shall not be considered by the commission in determining the validity of the grounds for dismissal, and shall not have any bearing on the commission's determination regarding the grounds for dismissal.*

(5) An order granting a motion for immediate reversal of suspension shall become effective within five days of service of the order. The school district shall make the employee whole for any lost wages, benefits, and compensation within 14 days of service of an order granting the motion.

(6) A motion made pursuant to ~~the~~ this section shall be the exclusive means of obtaining interlocutory review of suspension pending dismissal. *The grant or denial of the motion shall not be subject to interlocutory judicial review.*

SEC. 6. Section 44940 of the Education Code is amended to read:

44940. (a) For purposes of this section, “charged with a mandatory leave of absence offense” is defined to mean charged by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any sex offense as defined in Section 44010, with a violation or attempted violation of Section 187 of the Penal Code, or with the commission of any offense involving aiding or abetting the unlawful sale, use, or exchange to minors of controlled substances listed in Schedule I, II, or III, as contained in Sections 11054, 11055, and 11056 of the Health and Safety Code.

(b) For purposes of this section, “charged with an optional leave of absence offense” is defined to mean a charge by complaint, information, or indictment filed in a court of competent jurisdiction with the commission of any controlled substance offense as defined in Section 44011 or 87011, Sections 11357 to 11361, inclusive, or Section 11363, 11364, or 11370.1 of the Health and Safety Code, insofar as these sections relate to any controlled substances.

1 (c) For purposes of this section and Section 44940.5, the term  
2 “school district” includes county offices of education.

3 (d) (1) If a certificated employee of a school district is charged  
4 with a mandatory leave of absence offense, as defined in  
5 subdivision (a), upon being informed that a charge has been filed,  
6 the governing board of the school district shall immediately place  
7 the employee on compulsory leave of absence. The duration of  
8 the leave of absence shall be until a time not more than 10 days  
9 after the date of entry of the judgment in the proceedings. No later  
10 than 10 days after receipt of the complaint, information, or  
11 indictment described by subdivision (a), the school district shall  
12 forward a copy to the Commission on Teacher Credentialing.

13 (2) Upon receiving a copy of a complaint, information, or  
14 indictment described in subdivision (a) and forwarded by a school  
15 district, the Commission on Teacher Credentialing shall  
16 automatically suspend the employee’s teaching or service  
17 credential. The duration of the suspension shall be until a time not  
18 more than 10 days after the date of entry of the judgment in the  
19 proceedings.

20 (e) (1) If a certificated employee of a school district is charged  
21 with an optional leave of absence offense as defined in subdivision  
22 (b), the governing board of the school district may immediately  
23 place the employee upon compulsory leave in accordance with the  
24 procedure in this section and Section 44940.5. If any certificated  
25 employee is charged with an offense deemed to fall into both the  
26 mandatory and the optional leave of absence categories, as defined  
27 in subdivisions (a) and (b), that offense shall be treated as a  
28 mandatory leave of absence offense for purposes of this section.  
29 No later than 10 days after receipt of the complaint, information,  
30 or indictment described by subdivision (a), the school district shall  
31 forward a copy to the Commission on Teacher Credentialing.

32 (2) Upon receiving a copy of a complaint, information, or  
33 indictment described in subdivision (a) and forwarded by a school  
34 district, the Commission on Teacher Credentialing shall  
35 automatically suspend the employee’s teaching or service  
36 credential. The duration of the suspension shall be until a time not  
37 more than 10 days after the date of entry of the judgment in the  
38 proceedings.

39 SEC. 7. Section 44941 of the Education Code is amended to  
40 read:



1 44941. (a) The notice of suspension and intention to dismiss,  
2 shall be in writing and be served upon the employee personally or  
3 by United States registered mail addressed to the employee at his  
4 or her last known address. A copy of the charges filed, containing  
5 the information required by Section 11503 of the Government  
6 Code, together with a copy of the provisions of this article, shall  
7 be attached to the notice. If the employee does not demand a  
8 hearing within the 30-day period, he or she may be dismissed upon  
9 the expiration of 30 days after service of the notice.

10 (b) ~~An employee who has demanded a hearing pursuant to this~~  
11 ~~section shall be deemed to have fulfilled the conditions for~~  
12 ~~requesting a hearing under this article and under Sections 11505~~  
13 ~~and 11506 of the Government Code, and shall not have waived~~  
14 ~~any right for failure to file any other or subsequent notice of~~  
15 ~~defense or request for hearing.~~ *demands a hearing shall file a*  
16 *single document containing his or her request for a hearing*  
17 *pursuant to this section and a notice of defense pursuant to Sections*  
18 *11505 and 11506 of the Government Code.*

19 SEC. 8. Section 44944 of the Education Code is amended to  
20 read:

21 44944. (a) (1) In a dismissal or suspension proceeding initiated  
22 pursuant to Section 44934, if a hearing is requested by the  
23 employee, the hearing shall be commenced within six months from  
24 the date of the employee's demand for a hearing, and the hearing  
25 shall be completed *by a closing of the record* within seven months  
26 from the date of the employee's demand for a hearing. The hearing  
27 date shall be established after consultation with the employee and  
28 the governing board, or their representatives. The hearing date  
29 may be continued in accordance with Sections 11505 and 11524  
30 of the Government Code, except that no continuance shall extend  
31 the date for ~~completion of the hearing~~ *the close of the record* more  
32 than seven months from the date of the ~~employees~~ *employee's*  
33 request for a hearing, except for ~~good cause~~ *extraordinary*  
34 *circumstances*, as determined by the administrative law judge. The  
35 hearing shall be initiated and conducted, and a decision made, in  
36 accordance with Chapter 5 (commencing with Section 11500) of  
37 Part 1 of Division 3 of Title 2 of the Government Code, and the  
38 Commission of Professional Competence shall have all of the  
39 power granted to an agency pursuant to that chapter, except as  
40 described in this article.

1 (2) *If the record cannot be closed within the timeframe*  
2 *established by paragraph (1), the charges shall be dismissed*  
3 *without prejudice to the governing board to refile within 30 days*  
4 *a notice of dismissal on the same charges.*

5 ~~(2)~~

6 (3) (A) No witness shall be permitted to testify at the hearing  
7 except upon oath or affirmation. No testimony shall be given or  
8 evidence introduced relating to matters that occurred more than  
9 four years before the date of the filing of the notice, except as  
10 provided in subparagraph (B). Evidence of records regularly kept  
11 by the governing board concerning the employee may be  
12 introduced, but no decision relating to the dismissal or suspension  
13 of any employee shall be made based on charges or evidence of  
14 any nature relating to matters occurring more than four years before  
15 the filing of the notice, except as provided in subparagraph (B).

16 (B) Testimony and evidence relating to matters that occurred  
17 more than four years before the date of the filing of the notice  
18 pursuant to Section 44934 may not be considered, received as  
19 evidence, or relied upon, except as deemed relevant by the  
20 administrative law judge to charges that involve any act as  
21 described in Section 44010 of this code, and Sections 11165.2 to  
22 11165.6, inclusive, of the Penal Code.

23 (b) (1) The hearing provided for in this section shall be  
24 conducted by a Commission on Professional Competence, unless  
25 the parties submit a statement in writing to the Office of  
26 Administrative Hearings, indicating that both parties waive the  
27 right to convene a Commission on Professional Competence and  
28 stipulate to having the hearing conducted by a single administrative  
29 law judge.

30 (2) If the parties elect not to waive a hearing before a  
31 Commission on Professional Competence, one member of the  
32 commission shall be selected by the employee, one member shall  
33 be selected by the governing board, and one member shall be an  
34 administrative law judge of the Office of Administrative Hearings  
35 who shall be chairperson and a voting member of the commission  
36 and shall be responsible for assuring that the legal rights of the  
37 parties are protected at the hearing.

38 (3) The governing board and the employee shall select  
39 commission members no later than 45 days before the date set for  
40 hearing, and shall serve notice of their selection upon all other

1 parties and upon the Office of Administrative Hearings. Failure  
2 to meet this deadline shall constitute a waiver of the right to  
3 selection, and the county board of education or its specific designee  
4 shall immediately make the selection. If the county board of  
5 education is also the governing board of the school district or has  
6 by statute been granted the powers of a governing board, the  
7 selection shall be made by the Superintendent, who shall be  
8 reimbursed by the school district for all costs incident to the  
9 selection.

10 (4) Any party who believes that a selected commission member  
11 is not qualified may file an objection, including a statement  
12 describing the basis for the objection, with the Office of  
13 Administrative Hearings, and serve the objection and statement  
14 upon all other parties, within 10 days of the date that the notice of  
15 selection is filed. Within seven days after the filing of any  
16 objection, the administrative law judge assigned to the matter shall  
17 rule on the objection, or convene a teleconference with the parties  
18 for argument.

19 (5) The member selected by the governing board and the  
20 member selected by the employee shall not be related to the  
21 employee and shall not be employees of the district initiating the  
22 dismissal or suspension. Each member shall hold a currently valid  
23 credential and have at least three years' experience within the past  
24 10 years in the discipline of the employee.

25 (c) (1) The decision of the Commission on Professional  
26 Competence shall be made by a majority vote, and the commission  
27 shall prepare a written decision containing findings of fact,  
28 determinations of issues, and a disposition that shall be, solely,  
29 one of the following:

30 (A) That the employee should be dismissed.

31 (B) That the employee should be suspended for a specific period  
32 of time without pay.

33 (C) That the employee should not be dismissed or suspended.

34 (2) The decision of the Commission on Professional Competence  
35 that the employee should not be dismissed or suspended shall not  
36 be based on nonsubstantive procedural errors committed by the  
37 school district or governing board unless the errors are prejudicial  
38 errors.

39 (3) The commission shall not have the power to dispose of the  
40 charge of dismissal by imposing probation or other alternative

1 sanctions. The imposition of suspension pursuant to subparagraph  
2 (B) of paragraph (1) shall be available only in a suspension  
3 proceeding authorized pursuant to subdivision (b) of Section 44932  
4 or Section 44933.

5 (4) The decision of the Commission on Professional Competence  
6 shall be deemed to be the final decision of the governing board.

7 (5) The governing board may adopt from time to time rules and  
8 procedures not inconsistent with this section as may be necessary  
9 to effectuate this section.

10 (6) The governing board and the employee shall have the right  
11 to be represented by counsel.

12 (d) (1) If the member selected by the governing board or the  
13 member selected by the employee is employed by any school  
14 district in this state, the member shall, during any service on a  
15 Commission on Professional Competence, continue to receive  
16 salary, fringe benefits, accumulated sick leave, and other leaves  
17 and benefits from the district in which the member is employed,  
18 but shall receive no additional compensation or honorariums for  
19 service on the commission.

20 (2) *If the member selected is a retired employee, the member*  
21 *shall receive pay at a reasonable hourly rate not to exceed the*  
22 *average hourly rate of a substitute employee in the same discipline.*  
23 *Service on a commission shall not be credited toward retirement*  
24 *benefits.*

25 ~~(2)~~  
26 (3) If service on a Commission on Professional Competence  
27 occurs during summer recess or vacation periods, the member shall  
28 receive compensation proportionate to that received during the  
29 current or immediately preceding contract period from the  
30 member's employing district, whichever amount is greater.

31 (e) (1) If the Commission on Professional Competence  
32 determines that the employee should be dismissed or suspended,  
33 the governing board and the state shall share equally the expenses  
34 of the hearing, including the cost of the administrative law judge.  
35 The state shall pay any costs incurred under ~~paragraph~~ *paragraphs*

36 (2) *and* (3) of subdivision (d), the reasonable expenses, as  
37 determined by the administrative law judge, of the member selected  
38 by the governing board and the member selected by the employee,  
39 including, but not limited to, payments or obligations incurred for  
40 travel, meals, and lodging, and the cost of the substitute or

1 substitutes, if any, for the member selected by the governing board  
2 and the member selected by the employee. The Controller shall  
3 pay all claims submitted pursuant to this paragraph from the  
4 General Fund, and may prescribe reasonable rules, regulations,  
5 and forms for the submission of the claims. The employee and the  
6 governing board shall pay their own attorney's fees.

7 (2) If the Commission on Professional Competence determines  
8 that the employee should not be dismissed or suspended, the  
9 governing board shall pay the expenses of the hearing, including  
10 the cost of the administrative law judge, any costs incurred under  
11 ~~paragraph~~ *paragraphs* (2) and (3) of subdivision (d), the reasonable  
12 expenses, as determined by the administrative law judge, of the  
13 member selected by the governing board and the member selected  
14 by the employee, including, but not limited to, payments or  
15 obligations incurred for travel, meals, and lodging, the cost of the  
16 substitute or substitutes, if any, for the member selected by the  
17 governing board and the member selected by the employee, and  
18 reasonable attorney's fees incurred by the employee.

19 (3) As used in this section, "reasonable expenses" shall not be  
20 deemed "compensation" within the meaning of subdivision (d).

21 (4) If either the governing board or the employee petitions a  
22 court of competent jurisdiction for review of the decision of the  
23 commission, the payment of expenses to members of the  
24 commission required by this subdivision shall not be stayed.

25 (5) If the decision of the commission is finally reversed or  
26 vacated by a court of competent jurisdiction, either the state, having  
27 paid the commission members' expenses, shall be entitled to  
28 reimbursement from the governing board for those expenses, or  
29 the governing board, having paid the expenses, shall be entitled  
30 to reimbursement from the state.

31 (f) The hearing provided for in this section shall be conducted  
32 in a place selected by agreement among the members of the  
33 commission. In the absence of agreement, the place shall be  
34 selected by the administrative law judge.

35 SEC. 9. Section 44944.2 is added to the Education Code, to  
36 read:

37 44944.2. (a) In a dismissal or suspension proceeding under  
38 Section 44944, in lieu of written discovery required pursuant to  
39 Section 11507.6 of the Government Code, the parties shall make  
40 disclosures as described in this section.

1 (1) An initial disclosure shall comply with the following  
2 requirements:

3 (A) A party shall, without awaiting a discovery request, provide  
4 to the other parties both of the following:

5 (i) The name and, if known, the address and telephone number  
6 of each individual likely to have discoverable information, along  
7 with the subjects of that information, that the disclosing party may  
8 use to support its claims or defenses, unless the use would be solely  
9 for impeachment purposes.

10 (ii) A copy of all documents, electronically stored information,  
11 and tangible items that the disclosing party has in its possession,  
12 custody, or control and may use to support its claims or defenses,  
13 unless the use would be solely for impeachment.

14 (B) The school district *and the employee* shall make ~~its~~ *their*  
15 initial disclosures within ~~30~~ 45 days of the date of service of the  
16 notice of intention to dismiss or suspend. ~~The employee shall make~~  
17 ~~his or her initial disclosures within 30 days of the date of service~~  
18 ~~of the school district's initial disclosures.~~ *the employee's demand*  
19 *for a hearing.*

20 (C) A party shall make its initial disclosures based on the  
21 information then reasonably available to it. A party is not excused  
22 from making its disclosures because it has not fully investigated  
23 the case or because it challenges the sufficiency of another party's  
24 disclosures. A party's failure to make initial disclosures within the  
25 deadlines set forth in this section shall preclude the party from  
26 introducing witnesses or evidence not disclosed at the hearing,  
27 unless the party shows good cause for its failure to timely disclose.

28 (D) A party has an obligation to promptly supplement its initial  
29 disclosures as new information or evidence becomes known or  
30 available. Supplemental disclosures shall be made as soon as  
31 possible, and no later than 60 days before the date of  
32 commencement of the hearing. A party's failure to make  
33 supplemental disclosures promptly upon discovery or availability  
34 of new information or evidence shall preclude the party from  
35 introducing witnesses or evidence not disclosed at the hearing,  
36 unless the party shows good cause for its failure to timely disclose.

37 (2) The disclosure of expert testimony shall comply with the  
38 following requirements:

39 (A) A party shall also disclose to the other parties the identities  
40 of any expert witnesses whose testimony it may use at the hearing.

1 (B) The disclosure specified in subparagraph (A) shall be  
2 accompanied by a summary of the witness' expected testimony,  
3 including a description of the facts and data considered by the  
4 witness; a description of the witness's qualifications, including a  
5 list of all publications authored in the previous 10 years; a list of  
6 all other cases in which, during the previous four years, the witness  
7 testified as an expert at a hearing or by deposition; and a statement  
8 of the compensation to be paid to the expert witness.

9 (C) Expert witness disclosures shall be made no later than 60  
10 days before the date of commencement of hearing. A party's failure  
11 to make full and timely expert witness disclosures shall preclude  
12 the party's use of the expert witness' testimony or evidence at the  
13 hearing.

14 (3) Prehearing disclosures shall comply with the following  
15 requirements:

16 (A) In addition to the disclosures required in paragraphs (1) and  
17 (2), a party shall provide to the other parties the following  
18 information about the evidence that it may present at the hearing:

19 (i) The name, and if not previously provided, the address and  
20 telephone number of each witness, separately identifying those  
21 the party expects to present and those it may call if the need arises.

22 (ii) An identification of each exhibit, separately identifying  
23 those items the party expects to offer and those it may offer if the  
24 need arises.

25 (B) Prehearing disclosures shall be made at least 30 days before  
26 the hearing.

27 (i) Within 14 days after prehearing disclosures are made, a party  
28 shall file and serve any objections, along with the grounds for each  
29 objection, to the admissibility of evidence.

30 (ii) These objections shall be decided on the first day of hearing,  
31 or at a prehearing conference conducted pursuant to Section  
32 11511.5 of the Government Code. Documents and individuals not  
33 timely disclosed without good cause shall be precluded from  
34 admission at the hearing.

35 (b) In addition to the disclosures required by subdivision (a),  
36 the parties may obtain discovery by oral deposition in California,  
37 in accordance with Sections 2025.010 to 2025.620, inclusive, of  
38 the Code of Civil Procedure, except as described in this article.  
39 The school district may take the depositions of the employee and  
40 no more than four other witnesses, and the employee may take

1 depositions of no more than five witnesses. Each witness deposition  
2 is limited to seven hours.

3 (c) If the right to disclosures or oral depositions is denied by  
4 either the employee or the governing board, the exclusive right of  
5 a party seeking an order compelling production of discovery shall  
6 be pursuant to Section 11507.7 of the Government Code. If a party  
7 seeks protection from unreasonable or oppressive discovery  
8 demands, the exclusive right of a party seeking an order for  
9 protection shall be pursuant to Section 11450.30 of the Government  
10 Code.

11 SEC. 10. If the Commission on State Mandates determines  
12 that this act contains costs mandated by the state, reimbursement  
13 to local agencies and school districts for those costs shall be made  
14 pursuant to Part 7 (commencing with Section 17500) of Division  
15 4 of Title 2 of the Government Code.